TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 167

AMERICAN NATIONAL COMPANY, AS RECEIVER FOR THE F. B. COLLINS INVESTMENT COMPANY, APPELLANT,

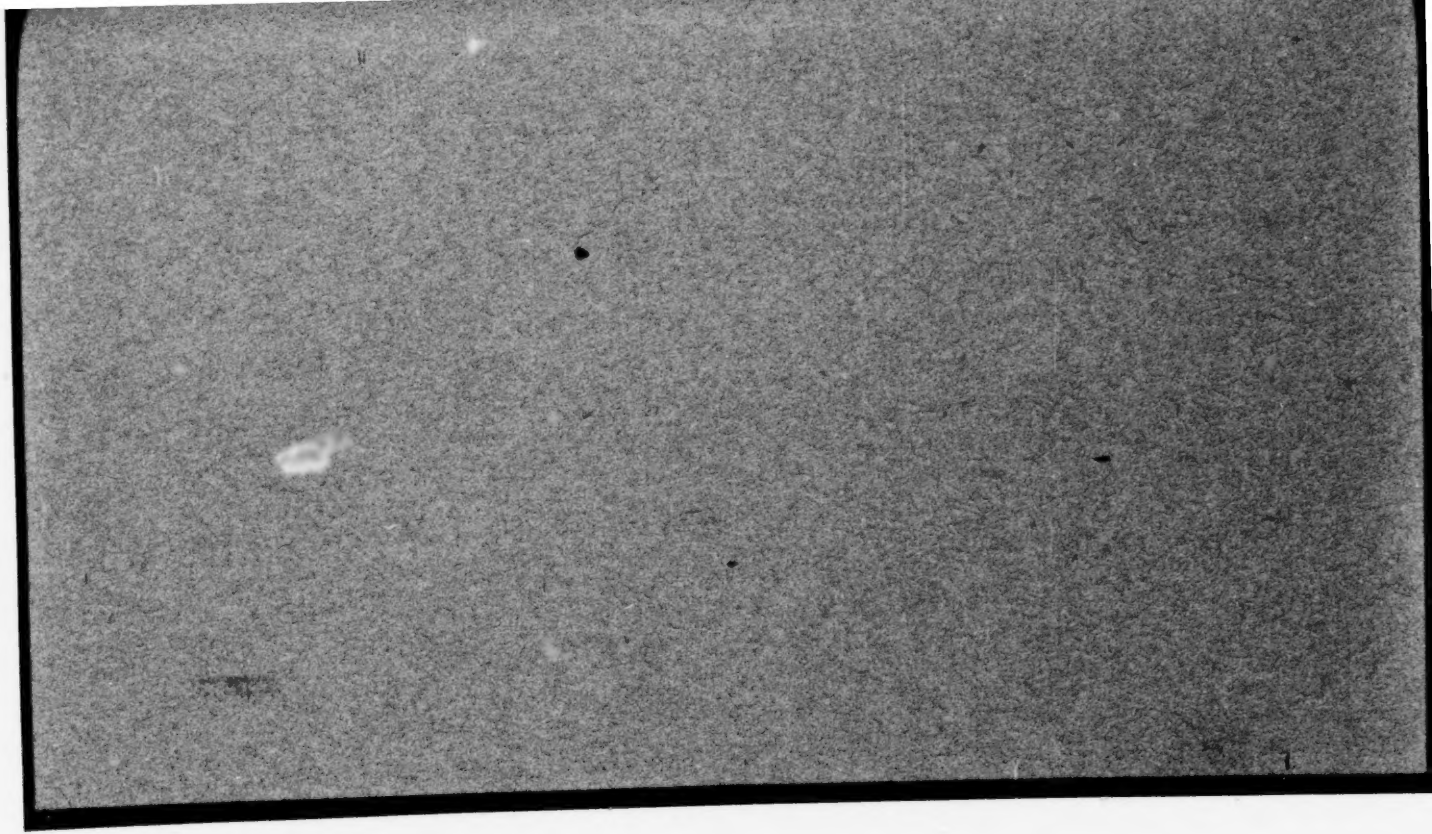
vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED JULY 12, 1926

(31,330)



(31,320)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 597

AMERICAN NATIONAL COMPANY, AS RECEIVER FOR THE F. B. COLLINS INVESTMENT COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 27, 1925

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[fols. 1-3] CITATION—In usual form, showing service on Wm. D. Mitchell; filed July 6, 1925; omitted in printing

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[fol. 4] **IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA**

No. 2790

THE AMERICAN NATIONAL COMPANY, a Corporation, as Receiver for The F. B. Collins Investment Company, a Corporation, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant

PETITION—Filed Feb. 28, 1924

Comes now the plaintiff above named and for its cause of action against the defendant above named alleges and says:

1. That it is now, and was at all times herein mentioned, a corporation duly chartered, organized and existing under and by virtue of the laws of the State of Oklahoma, and having its residence and its principal office and place of business at Oklahoma City in the Western District of said State; that The F. B. Collins Investment Company is now, and was at all times herein mentioned, a corporation duly chartered, organized and existing under and by virtue of the laws of the State of Oklahoma, and having its residence and its principal office and place of business at Oklahoma City in the Western District of said State; that on the 10th day of May, 1923, in an action then pending in the District Court of Oklahoma County in the State of Oklahoma entitled M. Kluge, plaintiff, vs. The F. B. Collins Investment Company, defendant, being cause No. 38988 in said court, the plaintiff in this action and H. C. Whalen and Guy C. Dunn were by order of said court appointed joint receivers for said The F. B. Collins Investment Company, a full, true and correct copy of which order is hereto attached, marked "Exhibit A," and made a part hereof; that immediately after said order appointing them was made and on the same day this plaintiff and [fol. 5] said H. C. Whalen and Guy C. Dunn qualified as such receivers by taking and filing the prescribed oath and making and filing the required bond, which was duly approved by the court, in said action; that thereafter, and on the 15th day of May, 1923, said H. C. Whalen and Guy C. Dunn made in writing and filed in said action their resignation as such receivers and their request that they be discharged from said office, and thereupon said court on said date made its further order in said action accepting the resignation of said H. C. Whalen and Guy C. Dunn as such receiv-

ers and discharging them from said office and continuing and appointing this plaintiff as sole receiver for said The F. B. Collins Investment Company, a full, true and correct copy of which order is hereto attached, marked "Exhibit B," and made a part hereof; and that this plaintiff has been ever since said 15th day of May, 1923, and still is the duly appointed qualified and acting sole receiver for said The F. B. Collins Investment Company.

2. That on the 30th day of December, 1922, and for a long time before and after said date, one David C. Bennington was Collector of Internal Revenue for the District of Oklahoma for the United States; that on said date said The F. B. Collins Investment Company paid said Bennington as such collector additional income and excess profits tax for the year 1917, which had been assessed against it by the Commissioner of Internal Revenue under the revenue laws of the United States, in the sum of $4,268.36, and interest thereon in the sum of $463.12, making the total sum of $4,731.48 of tax and interest paid; that said payment was made after written notice and demand for payment thereof, duly signed by said Bennington as such Collector of Internal Revenue, had been made and served upon said The F. B. Collins Investment Company and on the last day for the payment thereof under the terms of said written notice and demand before a penalty for non-payment would be imposed; and that said payment was made under protest and the receipt issued therefor by said Bennington was endorsed by him as paid [fol. 6] under protest, a full, true and correct copy of which receipt is hereto attached, marked "Exhibit C," and made a part hereof.

3. That said The F. B. Collins Investment Company at all times herein mentioned prior to the intervention of said receivership was engaged in what is commonly known as the farm loan business, that is to say, it made loans of money which were evidenced by notes, termed first mortgage bonds, signed by the borrowers and secured by mortgages on real estate, and then sold and assigned such notes or bonds and their securities to permanent investors, using the proceeds of such sales to make other such loans, and deriving its profits from commission charged the borrowers for making the loans; that throughout the year 1917, and also both before and after, in order to stimulate the sale of its mortgage bonds and as an inducement to investors to buy the same, it contracted and agreed in writing with each purchaser of a mortgage bond to pay a bonus of one per cent per annum on the principal of the loan for the life thereof according to the terms of the bond; that the obligations of said The F. B. Collins Investment Company arising from and evidenced by such bonus contracts executed by it in the year 1917 amounted to the sum of $9,405.79, and constituted expense and indebtedness incurred and accrued in the production of its income for said year; that for said year, and also both before and after, it kept its books and made return of its income under the revenue laws of the United States upon an accrual basis, and therefore, had the right and was under the duty to include in its gross income all items

of income earned and accrued, as well as those actually received, and to deduct therefrom all items of expense incurred and accrued, as well as those actually paid, in arriving at its net income; that the Commissioner of Internal Revenue wrongfully, erroneously and unlawfully rejected and disallowed the amount of said expense incurred and accrued as above set forth in the sum of $9,405.79 as a deduction from its gross income in said year, thereby increasing its taxable net income by that amount, and also wrongfully, erroneously and unlawfully reduced its invested capital for the year [fol. 7] 1917 in some amount and upon some grounds never disclosed to it and of which it does not have knowledge, and assessed additional tax against it in the sum of $4,287.64, based on the disallowance of said deduction from income and said reduction of invested capital; that the sum of $19.28 from an overassessment against it for the year 1919 was credited on the amount of said tax, leaving the said sum of $4,268.36 to be paid, together with interest thereon, as above set forth; and that said tax was wrongfully, erroneously and illegally assessed and collected and the plaintiff is entitled to recover the amount thereof, both principal and interest, with interest thereon at the rate of six per cent per annum from the 30th day of December, 1922.

4. That on the 30th day of December, 1922, and immediately after the payment of the said tax and interest, said The F. B. Collins Investment Company filed its written claim for the refund of the amount thereof, or such greater amount as might be legally refundable, with said Bennington as such Collector of Internal Revenue, a full, true and correct copy of which claim is hereto attached, marked "Exhibit D", and made a part hereof; and that thereafter, and prior to the first day of August, 1923, the Commissioner of Internal Revenue rejected said claim for refund.

Wherefore, premises considered, the plaintiff as receiver aforesaid prays that it have and recover of and from the defendant the sum of $4,750.76 with interest thereon at the rate of six per cent per annum from the 30th day of December, 1922, and the costs of this action.

Chas. H. Garnett, Attorney for Plaintiff

Duly sworn to by Ray McClain. Jurat omitted in printing.

[fol. 8] EXHIBIT "A" TO PETITION

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY AND STATE OF OKLAHOMA

No. 38988

M. KLUGE, Plaintiff,

vs.

F. B. COLLINS INVESTMENT COMPANY, a Corporation, Defendant

Order

This cause coming on to be heard on this the 10th day of May, 1923, and it appearing to the court from the petition filed by the plaintiff herein and the answer of the defendant, corporation, herein filed that the defendant is a corporation organized under the laws of Oklahoma with its principal place of business in Oklahoma City and engaged in the negotiation and sale of real estate securities, and that plaintiff is a stockholder in said corporation, and that said corporation is unable to pay its current obligations now due and presently to become due and for that reason is in immient danger of insolvency, and that the appointment of receivers therefor will be for the benefit of the creditors and stockholders of said corporation; and it further appearing that such condition is not due to the fault or mismanagement of the present officers of the corporation who assumed their duties as such on May 1, 1923;

It is therefore, ordered, adjudged and decreed that receivers be appointed for said corporation, and it appearing that H. C. Whalen and Guy C. Dunn, stockholders and officers in said corporation, are conversant with the affairs of same, but in no way responsible for the embarrassed conditions of said corporation and all parties hereto agreeing to their appointment, the said H. C. Whalen, Guy C. Dunn and the American National Company, a corporation, organized under the laws of the State of Oklahoma with its principal place of business in Oklahoma City, and under the law qualified [fol. 9] to act as a receiver, be and they are hereby appointed receivers of the said F. B. Collins Investment Company to take charge of the estate, assets, books, business, and affairs thereof, to collect the outstanding debts, claims and properties due and belonging to the said F. B. Collins Investment Company, with power to prosecute and defend in the name of the corporation or otherwise all claims and suits, to appoint an agent or agents under them, and, subject to the approval of this court, to do all other acts which might be done by such corporation and which might be necessary and proper.

And it is further ordered, adjudged and decreed that said defendant, corporation, its officers, agents and attorneys do forthwith deliver to said receivers hereby appointed all and every part of its property, assets, effects and business and all books, vouchers and

other papers touching the business and estate of said defendant, corporation, or any part thereof, and its officers, agents and attorneys are enjoined from receiving any debts due said corporation and from paying or transferring any of its money, goods, chattels, rights, credits and effects and from transacting any business and from performing any act in the name of said corporation or on its behalf.

And it is further ordered that before entering upon the duties as receivers of such defendant, corporation, said receivers shall give bond, with surety to be approved by the Clerk for the faithful performance of their duties as such receivers in the sum of Ten Thousand Dollars ($10,000), and that said receivers from time to time make report of their proceedings to this court when ordered so to do.

T. G. Chambers, Judge.

Endorsed on back as follows: No. 38988. District Court. M. Kluge, Plaintiff, vs. F. B. Collins Investment Company, Defendant. Order Appointing Receivers. Filed in District Court, Oklahoma County, Oklahoma, May 10, 1923. Cliff Myers, Court Clerk, by Fritz Bluementhal, Deputy. 82-537.

[fol. 10] EXHIBIT "B" TO PETITION

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY, STATE OF OKLAHOMA

No. 38988

M. KLUGE, Plaintiff,

vs.

F. B. COLLINS INVESTMENT COMPANY, a Corporation, Defendant

Order

This cause coming on to be heard on the petition of H. C. Whalen and Guy C. Dunn, joint receivers appointed in above styled cause, tendering their resignation as such receivers, and it appearing that said petitioners as such receivers have no property or funds or assets in their hands or under their control as such receivers and have not incurred any indebtedness or liability as such receivers, and have not received or expended any of the funds belonging to the estate of F. B. Collins Investment Company, and the Court being fully advised in the premises, and by consent of the parties hereto as more fully appears by stipulation in this cause filed.

It is therefore, ordered, adjudged and decreed that the resignation of the said H. C. Whalen and Guy C. Dunn as receivers herein be accepted and the said H. C. Whalen and Guy C. Dunn hereby discharged as such receivers, and by consent of the parties thereto.

It is further ordered, adjudged and decreed that the American National Company, one of the joint receivers heretofore appointed in this cause, be and is hereby continued as the sole receiver herein with all the powers and responsibilities embodied and contained in the original order appointing said American National Company as one of the joint receivers in said cause.

[fol. 11] And it is further ordered, adjudged and decreed by consent of the parties hereto that the said American National Company, as sole receiver, is hereby authorized to employ as its attorneys and counsellors the firms of Beets & Darrough, Pearson & Baird and Thos. H. Owen on such compensation and for such fees as may hereafter — approved and ordered by this court.

Dated this 15th day of May, 1923.

T. G. Chambers, Judge.

Endorsed on back as follows: 38988. District Court. Order accepting resignation of receivers. Filed in District Court, Oklahoma County, Oklahoma, May 15, 1923. Cliff Myers, Court Clerk, by Cliff Myers, Deputy. 82-596.

[fol. 12] EXHIBIT "C" TO PETITION

Form 1-17b—Revised

United States Internal Revenue

Memorandum for Taxpayer. Income and Excess Profits Tax for 1917. Additional 1917

Oklahoma City, Oklahoma, December 20, 1922

Instructions to Taxpayer

Detach this part of the form and retain it as a record of the payment of your tax unless you want a receipt of other than the endorsement on your check. If a receipt is desired forward this part of the form and the notice with your remittance. Otherwise no receipt will be issued.

David C. Bennington.

December, 1920, List #257, Additional 1917 Tax.

Amount of abatement, claim rejected.....	$4,268.36
Int. at ½ of 1% per month for 21 months and 21 days.	463.12
	4,731.48

F. B. Collins Investment Co., Oklahoma City, Oklahoma.
Due December 30, 1922.

EXHIBIT "D" TO PETITION

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Form 843—Jan., 1922
Comptroller General U. S.
January 16, 1922

CLAIM FOR

- ☐ ABATEMENT OF TAX ASSESSED
- ☐ CREDIT AGAINST OUTSTANDING ASSESSMENTS
- ☐ REFUND OF TAXES ILLEGALLY COLLECTED
- ☐ REFUND OF AMOUNTS PAID FOR STAMPS USED IN ERROR OR EXCESS

COLLECTOR'S NOTATION
District
Account number
Date received
Stamp here
Collector of Internal Revenue

IMPORTANT
File with Collector of Internal Revenue whose assessment upon made. Not acceptable unless completely filled in.

State of Oklahoma } ss:
County of Oklahoma }

NOTICE TO COLLECTOR
Collector must indicate in block above the kind of claim, except in Income Tax cases.

Date received by Administrative Unit
Stamp here

TYPE OR PRINT

F. B. Collins Investment Co.
(Name of taxpayer or purchaser of stamps.)

206 Patterson Bldg., Oklahoma
(Residence—give street and number as well as city or town and State.)

(Business address.)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged Farm Loan Investments
2. Character of assessment or tax Income Tax $4,268.36; Int. $463.12 (State for or upon what the tax was assessed or the stamps affixed.)
3. Amount of assessment or stamps purchased $ 4,731.48
4. Reduction of Tax Liability requested (Income and Profits Tax) $ 4,731.48
5. Amount to be abated NONE $
6. Amount to be refunded (or such greater amount as is legally refundable) $ 4,731.48
7. Dates of payment (see Collector's receipts or indorsements of canceled checks) December 30, 1922
(If statement covers income tax liability, items 8-11, inclusive, must be answered.)
8. District in which return (if any) was filed Oklahoma
9. District in which unpaid assessment appears
10. Amount of overpayment claimed as credit $
11. Unpaid assessment against which credit is asked; period from to $

PERIOD	YEAR
From: Jan. 1	17
To: Dec. 31	17

Deponent verily believes that this application should be allowed for the following reasons:

That the additional tax assessed is based upon the disallowance of amounts claimed as expense incurred in the selling of loans to investors and carried on the Company's books as a liability, and styled "Guaranty Fund Reserve." All of which is fully set forth and shown by by statements, briefs and computations filed in connection with Abatement Claims and personal conferences with the Department in which it is set forth that the additional tax is not due. Said Abatement Claim has recently been rejected with respect to the above. The above named tax and interest has been paid under protest on this 30th day of December, 1922, and it is therefore, respectfully requested that the above amount be refunded together with interest from date of payment;

(Attach additional sheets if necessary.)

Sworn to and subscribed before me this 30th day of December, 1922

(SEAL) D. C. Tucker
Notary Public
My Commission expires June 22, 1925.

Signed:
The F. B. Collins Investment Co.,
By T. M. Miller
Vice-President

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

40—11704

Taxpayer's Record

Check		Money Order	
No.		No.	
Bank		Office of issue	
Date		Date	

December 30, 1922.—Paid under Protest. David C. Bennington, Collector of Internal Revenue, by M. Haws, Cashier. Collector Internal Revenue, District Oklahoma. Paid Dec. 30, 1922.

(Here follows Exhibit "D" to Petition, marked side folio page 13)

[fol. 14] [File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed Nov. 26, 1924

Comes now the defendant, the United States of America, in answer to the petition of the plaintiff herein, and says that it denies generally and specifically each, every and all the allegations in said petition contained, except such as are hereinafter specifically admitted.

1. It is admitted that the plaintiff, The American National Company is a corporation duly organized and existing under the laws of the State of Oklahoma, and that said company was appointed receiver of the F. B. Collins Investment Company, a corporation also duly organized and duly chartered by virtue of the laws of the State of Oklahoma.

2. It is also admitted that on December 30, 1922, the Collector of Internal Revenue for the District of Oklahoma was paid by The F. B. Collins Investment Company, for income and excess profits tax for the year 1917, the sum of four thousand seven hundred thirty-one and 48/100 dollars ($4,731.48) and that the same was paid under protest.

3. It is admitted that The F. B. Collins Investment Company was assessed additional tax in the sum of four thousand two hundred eighty-seven and 64/100 dollars ($4,287.64) and that the sum of nineteen and 28/100 dollars ($19.28) from an over-assessment [fol. 16] against it for year 1919 was credited on the amount of said tax, leaving the said sum of four thousand two hundred sixty-eight and 36/100 dollars ($4,268.36). It is specifically denied that such assessment and collection of said tax was wrongful, erroneous and

illegal. It also specifically denied that said Commissioner of Internal Revenue wrongfully, erroneously and unlawfully reduced the company's invested capital for the year of 1917 and it is further denied that the disallowance of the amount by the Commissioner of Internal Revenue was wrongful, erroneous and unlawful.

It is further admitted after the payment of said tax and interest as above mentioned, The F. B. Collins Investment Company filed a claim for refund and that the same was rejected.

Wherefore, defendant asks that plaintiff take nothing, and that said defendant recover its costs herein expended.

Roy St. Lewis, Attorney for Defendant.

[File endorsement omitted.]

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF FACTS AND STIPULATION THERETO—Filed March 28, 1925

The F. B. Collins Investment Company, the taxpayer involved in this action, and hereinafter referred to as the Company, was at all times mentioned herein a corporation, duly organized and existing under the laws of the State of Oklahoma, with its principal office and place of business at Oklahoma City, in said state. Its business was that of negotiating and making loans, secured by mortgages upon farm and city real estate, and the sale of such loans to investors. It had been engaged in such business since its incorporation in March, 1908. For making the loans, it received commissions, usually in the form of non-interest bearing notes, from the borrowers. The amount of the commission on a given loan was fixed at a certain per cent per annum, usually two per cent, of the amount of the loan for its term. The Company's income was derived from these commissions.

Beginning about the year 1916, the Company was able, by reason of having established its business and made a reputation for handling safe and desirable loans, to sell many of its loans direct to investors without the aid or assistance of a broker or agent in so doing, though it still sold some of them through brokers or agents.

[fol. 18] As an inducement to investors to purchase such loans direct, the Company agreed to pay a bonus to the investor upon the sale of such loan, this being an added consideration to the investor for the purchase of such loan and being made possible by the fact that the Company was relieved from paying any brokerage fee or agent's commission upon such sale. This bonus or added consideration to the investor was uniformly put in the form of a contract of the company by which it became obligated and bound to

pay to such investor one per cent of the principal of the loan annually during the life thereof.

The nature of the Company's business and the method by which each transaction was handled can best be set forth by an illustration or example of a particular loan, and for this purpose the following is submitted.

A borrower made application to the Company for a five year farm mortgage loan for the sum of $10,000.00 and executed his principal note or bond to the Company bearing interest at the rate of five per cent per annum payable annually. At the same time the borrower also executed another note for the sum of $1,000.00, which was non-interest bearing until maturity and which was usually due in two years from date, and which represented the Company's commission or compensation for its services in making and negotiating the loan. The principal note was secured by a first mortgage on real estate and the commission note was usually secured by a second mortgage upon the same real estate.

In order for the Company to sell the $10,000.00 principal note direct to a permanent investor, and as an inducement to such investor to purchase the same, it agreed and obligated itself to pay such investor an amount equal to one per cent per annum on the principal of the note, payable annually, for the full term thereof, or [fol. 19] until payment, if paid before maturity.

The Company's obligation to pay the investor this one per cent per annum of the principal of the note was evidenced by a written contract, a copy of which is attached hereto, marked "Exhibit A," and made a part hereof. At the time the note was sold to the investor, the Company charged on its books, as an expense incurred in the sale of the loan, the full amount of the annual payments provided for in the bonus contract referred to above, which it had given to the investor, computed at one per cent per annum on the face of the loan from the date of the contract to the maturity of the loan, and credited the investor on its books with a like amount.

The credits to investor's accounts by reason of these bonus contracts, given in the selling of loans, were handled on a subsidiary bills' payable ledger; and the total amount of this liability of the Company as shown by this ledger was carried on the general ledger under a control account called the Guaranty Fund Account.

The form of bond or note taken by the Company in making its loans to borrowers, a copy of which is attached as "Exhibit B" hereto, provided for the payment of $100.00 or any multiple thereof, or the whole amount of the loan, at any interest paying date after two or three years, at the option of the borrower, by giving sixty days' notice. In a very few instances the privilege of paying the note before maturity has been allowed to the borrower at the end of one year, but this was rarely done, the time usually fixed being at or after two years, although quite frequently it was fixed at three years or after. In the event that the principal loan or note was paid before maturity, the difference between the amount of the bonus con- [fol. 20] tract credited to the investor's account at the time the loan was sold to him and the actual payments made on such bonus con-

tract by the Company was credited back to Profit and Loss, and treated as income of the Company for the year in which the payment of the principal loan occurred.

The Company consistently kept its books of account from year to year on an accrual basis. For the year 1917 it accrued and set up on its books as a liability and charged to expense, the total amount of the annual payments provided for in bonus contracts executed and issued to investors during said year, the amount of each contract being taken at one per cent per annum, of the amount of the loan to which it related, from the date of the contract to the maturity date of the loan. This practice had been followed from the inception of the Company's so-called bonus method of selling its securities to permanent investors. Its tax return for the year 1917 was made upon the basis upon which its accounts were kept.

The tax in dispute in this action was assessed and paid for the year 1917. The commissioner fixed and determined the Company's net income for that year at $40,746.26. Upon this net income he computed and determined the Company's tax to be $10,456.36. This amount of tax was assessed against the Company and duly paid. It is admitted and agreed by the plaintiff, as Receiver for the Company, that $6,168.72 of such tax was correctly and legally assessed and collected.

During the year 1917 the Company executed its bonus contracts to purchasers of its mortgage loans in the aggregate amount of $11,082.90. In arriving at this aggregate sum the amount of value of each bonus contract was fixed and taken at one per cent per annum of the amount of the loan to which it related, computed from the [fol. 21] date of the contract to the maturity of the loan. The Company claimed this sum of $11,082.90 was an expense incurred and accrued in its business and as such was deductible from income. The Commissioner disallowed the deduction of this sum, but allowed as a deduction from gross income as an expense on this account only the amount representing the Company's obligations under its agreements with investors which matured within the year 1917 and which amount was the sum of $1,677.11. The difference between the sum of $11,082.90 as claimed by the Company and the sum of $1,677.11 as allowed by the Commissioner, to-wit: the sum of $9,405.79, was the net disallowance from gross income on account of contracts with investors.

The right of the company to this deduction from income is the question in dispute in this action. The tax involved is attributed solely to this item. If it was not deductible, then the Company's income was correctly fixed by the Commissioner at $40,746.26, and the full amount of tax paid was properly and legally assessed and collected, and the plaintiff is not entitled to any recovery in this action. If it was deductible, then the Company's net income was only $31,340.47 and the tax here in controversy in the sum of $4,287.64 was erroneously assessed and collected, and the plaintiff is entitled to recover a judgment for said sum plus $463.12 interest paid thereon, or a total sum of $4,750.76, with interest on such total sum at the rate of six per cent per annum from December 30, 1922,

being the date of payment of such sum. This payment was made under protest and after notice and demand therefor by the Collector at Oklahoma City, Oklahoma.

[fol. 22] Stipulation

It is hereby stipulated and agreed by the parties plaintiff and defendant in this action, by their respective counsel, that the facts stated in the foregoing statement and the exhibits therein referred to, consisting of five pages and said exhibits, are true and correct, and that said statement shall be filed and used as agreed evidence, or a stipulation of facts in lieu of evidence, in the case, but each party hereby reserves the right to introduce further evidence on the trial of the case, if it so desires, to add to or supplement the facts set forth in said statement..

Witness our hands this 25th day of March, 1925.

Chas. H. Garnett, Attorney for Plaintiff. Floyd F. Toomey. Roy St. Lewis, Asst. United States District Attorney for the Western District of Oklahoma, Attorney for the United States.

[fol. 23] Exhibit "A" to Statement of Facts

Special Guarantee. Loan No. 2000

Whereas, the F. B. Collins Investment Company (a corporation) is the mortgagee in a certain mortgage for Thousand and no/100 Dollars, executed by John Doe and Mary Doe, his wife, dated the 30th day of June, 1918, covering certain immovable property situate in Lincoln County, State of Oklahoma.

Whereas, Said loan has been sold to Eastern Investor and in consideration of the purchase thereof, the said The F. B. Collins Investment Company hereby agrees to pay the said purchaser One per cent per annum in addition to the Five per cent the loan bears. The said One per cent to be paid during the life of said loan, according to the terms contained in the bond.

Dated at Oklahoma City, Oklahoma, this 1st day of July, 1918.

The F. B. Collins Investment Company, by (Signed) —— ——, Vice-President.

Attest: (Signed) —— ——, Secretary.

[Written across face:] Specimen Copy.

[fol. 24] EXHIBIT "B" TO STATEMENT OF FACTS

No. 2000. $10,000.00.

Real Estate First Mortgage Bond Negotiated by the F. B. Collins Investment Company, Oklahoma City, Oklahoma

On the first day of July, 1922, I, we, or either of us promise to pay to the order of The F. B. Collins Investment Company (a corporation), of Oklahoma City, Oklahoma, for value received, the principal sum of Ten Thousand and no/100 Dollars with interest thereon at the rate of Five per cent per annum from June 30th, 1917 until maturity payable semi-annually according to the tenor of Ten interest notes one being for Two Hundred Fifty one and 37/100 Dollars and Nine others for Two Hundred Fifty and no/100 Dollars each, all of even date herewith, both principal and interest notes payable at the Chase National Bank, New York City, New York. If default be made for ten days in the payment of any sum either principal or interest, after the same becomes due and payable according to the terms thereof then the whole amount herein promised to be paid shall at the option of the holder hereof, at once become due and payable. All sums herein promised to be paid shall bear 10 per cent per annum interest after maturity, payable annually, whether the same becomes due according to the terms hereof, or by reason of default of any payment of principal or interest.

Privilege to pay $100.00 or any multiple thereof, or the whole amount, at the maturity of any interest payment, on and after Two years by giving sixty days' notice.

Dated at Oklahoma City, Okla., this 30th day of June, 1917.

John Doe. Mary Doe.

Attest: Richard Roe.

Endorsed on back thereof: No. 2000. Oklahoma Real Estate First Mortgage Bond. $10,000.00. John Doe et ux. to the F. B. Collins Investment Company, Oklahoma City, Oklahoma. Interest on the first day of January and July. Principal due July 1st, 1922. For value received, pay to Eastern Investor or order, without recourse. The F. B. Collins Investment Company, by (Signed) —— ——, President. Attest: (Signed) —— ——, Secretary.

[fol. 25] [File endorsement omitted]

[fols. 26-29] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed March 30, 1925

This cause coming on to be heard this 30th day of March, 1925, a judicial day of the Special March 1925 Term of said Court, both parties being present, the plaintiff being represented by Charles H.

Garnett, Attorney at Law, and the defendant being represented by Roy St. Lewis, Assistant United States Attorney, and Floyd F. Toomey, Special Attorney, Bureau of Internal Revenue, and the matter was presented to the Court on an agreed statement of facts, and the Court having heard additional evidence of witnesses sworn and examined in open court, and having heard argument and being fully advised in the premises, adopts the facts as set forth in the agreed statement of facts filed herein as its findings of fact, and from such facts the Court further finds that the plaintiff is not entitled to recover from the defendant the sum of $4,750.76 or any other sum, on account of income and profits taxes alleged to have been erroneously assessed and collected for the year 1917.

It is therefore by the Court considered, ordered and adjudged that the plaintiff take nothing by this action, and that the defendant recover the costs from the plaintiff; to which the plaintiff then and there excepted and exceptions were allowed.

John H. Cotteral, Judge.

OK. Chas. H. Garnett for Plaintiff.

OK. Roy St. Lewis, Asst. U. S. Atty.

[File endorsement omitted.]

[fols. 30 & 31] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed June 18, 1925

On consideration of the application for and notice of an appeal to the Supreme Court of the United States from the judgment rendered in this cause on the 30th day of March, 1925, which application and notice has been heretofore filed herein by the plaintiff, it is hereby ordered that an appeal to the Supreme Court of the United States from the said judgment heretofore filed and rendered herein, be, and the same is hereby, allowed to the plaintiff, and that a certified transcript of the pleadings in the case, the agreed statement of facts, the findings of facts by the court, the court's conclusions of law upon said facts, the final judgment of the court, and all such interlocutory orders, rulings, judgment, and decrees, as may be necessary to a proper review of the case, be forthwith transmitted to said Supreme Court of the United States.

Dated June 18th, 1925.

John H. Cotteral, Judge of the District Court of the United States for the Western District of Oklahoma.

[File endorsement omitted.]

[fols. 32-36] Bond on Appeal for $200.00—Approved and filed June 27, 1925; omitted in printing

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[fol. 37] In United States District Court

Clerk's Certificate

United States of America,
Western District of Oklahoma, ss:

I, Harry L. Finley, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in case Number 2790-Law, in said Court, wherein The American National Company, a corporation, as receiver for the F. B. Collins Investment Company, a corporation, is plaintiff, and The United States of America, is defendant, as full, true and complete as the said transcript purports to contain and as called for by the præcipe for transcript of the record above set forth.

I further certify that the original citation is hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the City of Guthrie, in said District, this 10th day of July, A. D. 1925.

Harry L. Finley, Clerk, by Theodore M. Filson, Deputy.
(Seal of the United States District Court, Western District of Oklahoma.)

[fol. 38] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation by Appellant of Parts of Record to be Printed, with Proof of Service—Filed July 16, 1925

Appellant's Statement of Points on Which it Intends to Rely

The appellant states that it intends to rely on its appeal on the point that the judgment of the trial court, based on the facts as agreed and found, is contrary to the law in that it denied to the appellant the right to make return of its income to the Commissioner of Internal Revenue for taxation for the year 1917 upon the same basis upon which its accounts were kept, which basis clearly reflected its income.

The appellant further states that the parts of the record which it thinks necessary for the consideration of the point stated above are:

(1) The Petition.
(2) The Answer.
(3) The Stipulation and Finding of Facts.
(4) The Judgment.

Streeter B. Flynn, Counsel for Appellant.

[fols. 39 & 40] Service of the foregoing statement on the appellee is accepted and acknowledged this 15th day of July, 1925, and the appellee hereby waives its right to designate parts of the record additional to those designated by the appellant as material and hereby consents to a hearing of the appeal on the parts designated by the appellant.

William D. Mitchell, K., Solicitor General of the United States.

[fol. 41] [File endorsement omitted.]

Endorsed on cover: File No. 31,320. W. Oklahoma D. C. U. S. Term No. 597. American National Company, as Receiver for the F. B. Collins Investment Company, appellant, vs. The United States of America. Filed July 13th, 1925. File No. 31,320.